

1 AN ACT
2 RELATING TO STATE FINANCE; ALLOWING DIRECT INVESTMENT OF THE
3 SEVERANCE TAX PERMANENT FUND IN NEW MEXICO OWNED AND
4 OPERATED FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY
5 FUNDS; PROVIDING AND QUALIFYING LIMITATIONS; PROVIDING A
6 GROSS RECEIPTS TAX EXEMPTION.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. A new section of Chapter 7, Article 27 NMSA
10 1978 is enacted to read:

11 "INVESTMENT IN FINE ART AND FINE MUSICAL INSTRUMENT
12 PRIVATE EQUITY FUNDS OWNED AND OPERATED IN NEW MEXICO. --

13 A. No more than three percent of the market
14 value of the severance tax permanent fund may be invested in
15 New Mexico fine art and fine musical instrument private
16 equity funds under this section.

17 B. If an investment is made under this section,
18 not more than fifty million dollars (\$50,000,000) of the
19 amount authorized for investment pursuant to Subsection A of
20 this section shall be invested in any one fine art or fine
21 musical instrument private equity fund.

22 C. The state investment officer shall make
23 investments pursuant to this section only upon approval of
24 the state investment council after a review by the private
25 equity investment advisory committee. The state investment

1 officer may make an investment pursuant to this section only
2 in a New Mexico fine art or fine musical instrument private
3 equity fund that:

4 (1) is owned, managed and operated in New
5 Mexico;

6 (2) has shown to the satisfaction of the
7 state investment council that it is a reputable investment
8 company with sufficient expertise in fine art or fine
9 musical instruments;

10 (3) has agreed that a majority of the
11 firm's employees will be New Mexico residents; and

12 (4) meets the following conditions:

13 (a) representations and warranties
14 made in the fund's private equity offering memorandum, its
15 subscription agreement and any other offering document are
16 approved by the state investment council;

17 (b) the fund manager will provide to
18 the state investment council audited statements on a
19 quarterly basis reflecting the activities of the fund; and

20 (c) all bank accounts of the fund
21 manager, whether used for operations or asset acquisition,
22 shall reside in banking institutions operating in New
23 Mexico.

24 D. As used in this section:

25 (1) "New Mexico fine art private equity

1 fund" means any limited partnership, limited liability
2 company or corporation organized and operating in New Mexico
3 that:

4 (a) has as its primary business
5 activity the use of funds to acquire fine art, which is
6 defined as art that has demonstrated that it has a secondary
7 market; has either been sold at auction or been produced by
8 an artist whose other work has sold at auction; and has a
9 value in no case less than two hundred fifty thousand
10 dollars (\$250,000) or more than six million five hundred
11 thousand dollars (\$6,500,000);

12 (b) will hold these acquisitions for
13 sale opportunistically, not later than ten years from the
14 date of acquisition, with the objective of capital
15 appreciation; and

16 (c) accepts investments only from
17 accredited investors as that term is defined in Section 2 of
18 the federal Securities Act of 1933, as amended, and rules
19 promulgated pursuant to Section 3 of that act; and

20 (2) "New Mexico fine musical instrument
21 private equity fund" means any limited partnership, limited
22 liability company or corporation organized and operating in
23 New Mexico that:

24 (a) has as its primary business
25 activity the use of funds to acquire fine musical

1 instruments, which are defined as musical instruments that
2 are stringed unfretted instruments; were made in the
3 seventeenth, eighteenth or nineteenth century in Italy,
4 France, Germany or England; have a maker whose instruments
5 have sold at auction; have demonstrated that they have a
6 secondary market; have a value in no case less than one
7 hundred fifty thousand dollars (\$150,000) and have a value
8 in no case more than eight million dollars (\$8,000,000);

9 (b) will hold these acquisitions for
10 sale opportunistically, not later than ten years from the
11 date of acquisition, with the objective of capital
12 appreciation; and

13 (c) accepts investments only from
14 accredited investors as that term is defined in Section 2 of
15 the federal Securities Act of 1933, as amended, and rules
16 promulgated pursuant to that section."

17 Section 2. Section 7-27-5 NMSA 1978 (being Laws 1983,
18 Chapter 306, Section 7, as amended) is amended to read:

19 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. --
20 The severance tax permanent fund shall be invested for two
21 general purposes, to provide income to the fund and to
22 stimulate the economy of New Mexico, preferably on a
23 continuing basis. The investments in Sections 7-27-5.1 and
24 7-27-5.6 NMSA 1978 shall be those intended to provide
25 maximum income to the fund and shall be referred to as the

1 market rate investments. The investments permitted in
2 Sections
3 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17,
4 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978 and the
5 investments permitted for fine art and fine musical
6 instruments provided in this article shall be those intended
7 to stimulate the economy of New Mexico and shall be referred
8 to as the differential rate investments. The prudent man
9 rule shall be applied to the market rate investments, and
10 the state investment officer shall keep separate records of
11 the earnings of the market rate investments. All
12 transactions entered into on or after July 1, 1991 shall be
13 accounted
14 for in accordance with generally accepted accounting
15 principles. "
